IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
July 24, 2008 Session

KHALID HASHMI DBA LIGHT INVESTMENT v. CITY OF CHATTANOOGA

Appeal from the Chancery Court for Hamilton County
No. 07-0241 W. Frank Brown, III, Chancellor

No. E2007-01199-COA-R3-CV - FILED NOVEMBER 24, 2008

This appeal involves the efforts of the plaintiff, Khalid Hashmi ("the Owner"), to prevent the demolition by the City of Chattanooga ("the City") of a block building ("the subject building") located at 4201 Fagan Street, Chattanooga. The Owner bought the property at a tax sale in 2005. In the trial court, following several hearings, the court dissolved a restraining order the Owner had obtained against the City. The order dissolving the restraining order permitted the City to demolish the plaintiff's building subject to certain conditions. The Owner appeals. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY, J., and SHARON G. LEE, SP.J., joined.

Jeffrey M. Atherton, Chattanooga, Tennessee, for the appellant, Khalid Hashmi dba Light

Investment Kenneth O. Fritz, Chattanooga, Tennessee, for the appellee, City of Chattanooga

OPINION

I.

In March 2007, under the statutory scheme set forth at Tenn. Code Ann. § 13-21-101 et seq. (1999) and the applicable ordinances of the City, the municipality obtained a demolition order pertaining to the subject building. The referenced statutes pertain to slum clearance and redevelopment. The subject building was condemned and deemed unfit for human occupation or use. The procedure to be followed in such cases is set forth in Tenn. Code Ann. § 13-21-106 (1999).

On March 12, 2007, the Owner sought and obtained a temporary restraining order against the City preventing it from demolishing the subject building. On March 29, 2007, the trial court

extended the restraining order and, at the Owner's request, continued a scheduled hearing on the matter. The court then held an on-site hearing on May 4, 2007. The Owner, representing himself, participated in the hearing. On May 9, 2007, the court entered an order that dissolved the restraining order and allowed the City to demolish the subject building "upon this Order's becoming final, unless this Order is stayed by the Court of Appeals." The Owner did not request a stay from this court. He timely filed a notice of appeal on June 1, 2007.

II.

In its final judgment, the trial court set out the parties' positions and essential facts as follows:

> First . . . [the Owner bought] property at a sale of delinquent tax property on June 2, 2005. The Decree Confirming Sale was filed on June 15, 2005 and reflected the buyer to be Ace & Light Investments. The house and yard had not been maintained regularly before the sale . . . .
>
> Second, [the Owner] bid $1,969.95 to purchase the property, which was the total amount owed on the property, and [the Owner's] bid was the only bid submitted for the property.
>
> Third, [the Owner] stated that he does not have the current funds to make repairs and improvements to the property. He testified that he cannot borrow the necessary funds unless he can obtain a loan that would be secured by the property.
>
> Fourth, [the Owner] cannot, by court action, obtain clear title to the property until three years passes from the tax decree and, thus, he cannot borrow the necessary funds to repair and rehabilitate the property, with the property as security for the loan, until sometime after June 15, 2008, which is the earliest time he can obtain a decree quieting his title. *See* [Tenn. Code Ann.] § 67-5-2702(d) and ***Inman v. Raymer***, No. E2003-01964-COA-R3-CV, 2004 [WL 948386, (Tenn. Ct. App. E.S., filed May 4, 2004)].
>
> Fifth, [the Owner] concludes that the statute and decision cited in the paragraph above effectively extends the one (1) year redemption period to three (3) years.
>
> Sixth, therefore, [the Owner] does not want, and cannot financially afford, to do anything to the property but secure it and maintain the yard until he can clear the title and obtain a loan against the property, sometime after June 15, 2008.

Seventh, [the Owner] believes that [the City] has "targeted" him or treated him unfairly because his property is not as "bad off" as some other dwellings in the neighborhood and he offered his testimony, Mr. Kirk's testimony and numerous photos as evidence that other properties on the same street and in the general neighborhood appeared to be in worse condition.

Eighth, while not able to identify each of [the Owner's] photos, witnesses for [the City] testified to their aggressive actions to have houses in the neighborhood rehabilitated or demolished and pointed to the cooperation of many owners of such houses.

Ninth, the City contends that the redemption period is one (1) year and would have expired on June 15, 2006. Thus, [the Owner] is (and has been) the title owner of the property.

Tenth, according to the testimony of employees of [the City] and neighbors, unknown persons would gain entry to the property and use the property for the sale of illegal drugs and [the Owner] was not able to attend to the property often. In collective Trial Exhibit 3, there are photos showing the house boarded and other photos reflecting the removal of the boards and an open dwelling. There are similar photos in collective Trial Exhibit 5.

Eleventh, [the Owner], and others who buy real estate at the sale of delinquent tax properties, must obey the local laws regarding the building codes and other safety laws.

Twelfth, that [the City] presented evidence that the property has been cited on many occasions, beginning on February 14, 2005, has been in "the system" for over two years, nothing of substance has been done by [the Owner] to repair the property, and the property should be demolished because it is a nuisance.

Thirteenth, portions of the Alton Park area of [the City] have undergone extensive renovation and [the City] has been aggressive in trying to have existing housing in the neighborhood comply with existing law or to have the unsafe houses demolished. The neighbors who testified at the hearing support the City's actions.

III.

The Owner states the following five issues:

1. The Trial Court erred in finding that the redemption period of on[e] year was controlling for the purposes of dissolving the restraining order.

2. The Trial Court erred in dissolving the restraining order based upon the violation of [the Owner's] due process rights relating to notice.

3. The Trial Court erred in finding that [the Owner] had not been targeted by [the City].

4. The Trial Court erred in that [the City] should have been estopped from pursuing demolition.

5. The preponderance of the evidence did not support the Trial Court's dissolving the restraining order.

IV.

Our review is *de novo* upon the record of the proceedings below; however, that record comes to us with a presumption that the trial judge's factual findings are correct. Tenn. R. App. P. 13(d). We must honor this presumption unless we find that the evidence preponderates against those findings. Tenn. R. App. P. 13(d); ***Hass v. Knighton***, 676 S.W.2d 554, 555 (Tenn. 1984). Our *de novo* review of the trial court's conclusions on matters of law, however, is undertaken with no presumption of correctness. ***Taylor v. Fezell***, 158 S.W.3d 352, 357 (Tenn. 2005). We review the trial court's application of law to the facts *de novo*, again with no presumption of correctness. ***State v. Thacker***, 164 S.W.3d 208, 248 (Tenn. 2005) (citation omitted).

Trial courts, unlike appellate courts, are able to observe witnesses as they testify and to assess their demeanor and other indices of credibility. Thus, trial courts are in a unique position to evaluate witness credibility. *See* ***Bolin v. State***, 405 S.W.2d 768, 771 (Tenn. 1966). Accordingly, appellate courts will not re-evaluate a trial court's assessment of witness credibility absent clear and convincing evidence to the contrary. *See* ***Wells v. Tennessee Bd. of Regents***, 9 S.W.3d 779, 783 (Tenn. 1999); ***Humphrey v. David Witherspoon, Inc.***, 734 S.W.2d 315, 315-16 (Tenn. 1987).

V.

A.

At the on-site hearing to determine whether to keep in force or dissolve the temporary restraining order, the Owner argued that Tenn. Code Ann. § 67-5-2504(d) (2006) and this court's decision in ***Inman v. Raymer***, No. E2003-01964-COA-R3-CV, 2004 WL 948386 (Tenn. Ct. App. E.S., filed May 4, 2004) effectively extend the one-year redemption period found at Tenn. Code Ann. § 67-5-2702 (2006) to three years. The trial court stated that the issue was "whether the 'redemption' period is one (1) or three (3) years."

Subsection (a) of the one-year redemption statute, Tenn. Code Ann. § 67-5-2702, provides that "Persons entitled to redeem property may do so by paying the moneys to the clerk as required by § 67-5-2703 within one (1) year from the date the property was sold, as evidenced by the order of confirmation; . . ." Similarly, subsection (b) of the statute states that "[a] taxpayer may redeem property that has been previously redeemed by paying to the clerk the moneys as required by § 67-5-2703 within one (1) year from the date the property was sold, as evidenced by the order of confirmation."

As previously noted, the Owner relies on subsection (d) of Tenn. Code Ann. § 67-5-2504, which states as follows:

> No suit shall be commenced in any court of the state to invalidate any tax title to land after three (3) years from the time the land was sold for taxes, except in case of persons under disability, who shall have one (1) year in which to bring suit after such disability is removed.

The City argues: "This issue, although addressed by the [trial court], was not relevant." We agree with the City. The statute of limitations stated in Tenn. Code Ann. § 67-5-2504(d) has no application in this case; its primary function is to give notice to former property owners whose property has been sold for delinquent taxes that they must take action within the prescribed time period or lose their right to do so. It is clear that this case does not involve an attack on the sale of property and is not about redemption rights. This case was brought under statutes totally unrelated to the law that governs tax sales. It is to be analyzed under the set of statutes concerning slum clearance and redevelopment and the applicable City's ordinances. Put another way, the law pertaining to this case would be the same regardless of whether the property was purchased at a tax sale or not.

The trial court found that the condition of the subject building was in violation of the City's ordinances in that it had "exposed ceilings, cracked and chipped paint, exposed wires and electrical receptacles with no covering or fixtures, lack of plumbing fixtures, missing windows, etc. . . . ." The subject building also had a long list of citations and violations for failure to clear overgrowth and failure to secure the structure. The trial court also found "[t]hat . . . in the last two years . . . persons have used the premises, without [the Owner's] permission, for illegal activities, mainly the illegal sale of drugs, and [the Owner] has done nothing to rehabilitate the structure but has only been able to secure the property sometimes . . . ." The trial court opined, and we agree, that the Owner's "lack

of cash to remediate the property, absent securing a loan secured by the property, is not a legal excuse to fail to comply with [the City's] Code." As a neighbor testified at the on-site hearing, "[The Owner] mentioned that he doesn't have money to fix [the property.]. If you don't have money to fix it, don't buy it."

There is no dispute as to whether the subject building was unfit for human habitation, in a dangerous condition, and subject to the City's administrative jurisdiction. Nothing in Tenn. Code Ann. § 67-5-2504(d), ***Inman v. Raymer***, or Tenn. Code Ann. § 67-5-2702 explicitly or implicitly, read *in pari materia* or separately, excuses the Owner in this case from complying with applicable statutes and ordinances concerning the condition of this blighted property. We appreciate that the Owner believes that the three-year statute of limitations in Tenn. Code Ann. § 67-5-2504(d) and this court's decision in ***Inman v. Raymer*** hinders him in his efforts to renovate the subject building and resell it. We understand that he cannot use the property as collateral for a loan to renovate the subject building until he has a clear title and, under the present state of the law, he cannot file a quiet title action until after the three-year statutory period for the taxpayer to attack the sale is over. As the Owner's expert witness, David Hawley, noted at the on-site hearing, however, this is a matter for the legislature and, indeed, according to Mr. Hawley, it has been taken up by the legislature.

The Owner's financial problems do not excuse his failure to minimally maintain the subject building. We agree with the trial court's conclusion: "Purchasers at a delinquent tax sale should use due diligence to determine the condition of any dwelling, what repairs, if any, would need to be made if required by code enforcement officials, the estimated costs thereof, and the financial ability to make such repairs before purchasing the property . . . ." Neither Tenn. Code Ann. § 67-5-2504(d) nor the ***Inman*** case provides support for the Owner's position. The legislature and this court did not, without saying so, extend the one-year redemption period found in Tenn. Code Ann. § 67-5-2702 to three years. We affirm the trial court's judgment on this point.

B.

The Owner claims that his due process rights were violated "particularly with regard to improper notice." The Owner says that "the proof in the record before the trial court supports [this] assertion. . . ." The Owner then cites this court to his "Petition for Restraining Order." In the petition, the Owner alleges that he "was not given adequate or proper notice in order [to] satisfy his due process rights on this matter due to no fault of his." The Owner's brief adds that the Owner "had not received proper notice of the demolition hearing;" but the Owner does not specify the "demolition hearing" he is talking about and the record shows that there were several hearings that the Owner attended.

The only specific statement in the Owner's main brief about the alleged violations of procedural due process is:

> Personal service is required or alternatively, service by registered mail, by [Tenn. Code Ann.] § 13-21-105. There is no proof in the record that either requirement was complied with by [the City] nor

> even of [the City's] compliance with Chattanooga City Code § 21-105.

The City, on the other hand says that it sent notice to the Owner's last known address.

The trial court did not address the Owner's due process issue. However, in our review of the record of the on-site hearing on May 4, 2007, we do not find any proof that the issue was raised at the hearing. Reviewing the record *de novo*, we do find proof of notice to the Owner in the form of an email to the Owner from an employee of the City stating, "Proper notice has been given to you legally regarding the hearing." The email was introduced into evidence by the Owner on a different issue. The email also informs the Owner that "the demolition hearing scheduled for the property will proceed as planned which is Wednesday, February 28th at 10:00 a.m. at the Development Resource Center." The email, which is dated February 26, is responding to an email of the Owner sent the previous Friday, February 23, 2007.

The Owner does not say in his brief when or how he received notice of the hearing, but the record is clear that he had actual notice. In a case involving a claim by a taxpayer that the notice provided by the state in connection with a tax sale of property was insufficient to satisfy constitutional requirements, the United States Supreme Court said:

> [W]e have stated that due process requires the government to provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

Jones v. Flowers, 547 U.S. 220, 226 (2006) (citing ***Mullane v. Central Hanover Bank & Trust Co.***, 339 U.S. 306, 314 (1950)).

In this case the Owner had notice consistent with the United States Supreme Court's definition and he had actual notice. The gist of the Owner's argument is that under Tenn. Code Ann. § 13-21-105 (1999), the City was required to personally serve him or obtain service by registered mail. However, the record reflects that the Owner has waived any argument that service was by an improper method because he has made a general appearance. ***Woodruff v. Anastasia Int'l, Inc.***, No. E2007-00874-COA-R3-CV, 2007 WL 4439677, at *3 (Tenn. Ct. App. E.S., filed December 19, 2007). A waiver occurs by "'some act or proceeding recognizing the case as being in court, or from the defendant's seeking, taking, or agreeing to some step or proceeding in the cause beneficial to himself or detrimental to the plaintiff other than one contesting only the jurisdiction of the court.'" ***Id***. (quoting ***Grosfelt v. Epling***, 718 S.W.2d 670, 672 (Tenn. Ct. App. 1986) (citing ***Patterson v. Rockwell Int'l***, 665 S.W.2d 96, 99-100 (Tenn. 1984)).

Here the Owner filed a "Petition for Restraining Order"on March 12, 2007, in which he raised the issue of improper service. He gained relief from the court in the form of a restraining order preventing the demolition of the subject building. The record does not include information concerning the disposition of any claim regarding how the Owner was served. Then the Owner appeared at a second hearing on March 27, 2007, and represented to the trial court that he needed additional time to prepare. Once again, the record does not reflect that the issue of notice was raised

by the Owner. On March 29, the trial court granted the Owner's request and postponed the hearing until May 4, 2007. The Owner next appeared at the May 4 hearing, representing himself. He called three witnesses on his behalf and introduced documentary evidence. One of the witnesses the Owner called was David Hawley, an attorney. Mr. Hawley testified that he had advised the Owner "as to the law in this area" and had previously represented the Owner and others as to "back tax sale" properties. But, once again, the record does not show that the issue of improper service was raised.[1]

As the City notes in its brief, "The essence of procedural due process is that an interested party be provided with notice and an opportunity to be heard at a meaningful time and in a meaningful manner." ***Manning v. City of Lebanon***, 124 S.W.3d 562, 566 (Tenn. Ct. App. 2003) (citing ***State v. AAA Bail Bonds, Inc.***, 993 S.W.2d 81, 86 (Tenn. App. 1998)). *See also* ***Logan v. Zimmerman Brush Co.***, 455 U.S. 422, 429-30 (1982). The record is clear that the Owner not only had actual notice but he also had an opportunity to be heard on at least three occasions.

We hold that the Owner waived the issue that he should have been personally served or served by a registered letter. He was given written notice. Apparently without raising the issue of notice, he attended the hearings of which he claims he did not have proper notice. He appeared to obtain a restraining order against the City and thereafter attended two hearings on the subject of whether the subject building should be demolished and at one, represented himself, testified, examined witnesses he called on his own behalf and witnesses called by the City, and entered documentary evidence in the record. In such circumstances, there is no violation of procedural due process. ***Brennco, Inc. v. City of Chattanooga Better Housing Comm'n***, No. E2000-01508-COA-R3-CV, 2001 WL 617196, at *2 (Tenn. Ct. App. E.S., filed June 6, 2001) (notice issue without merit since plaintiff actually attended meetings of which she claimed she had no notice).

C.

The Owner argues that "he and his property have been unduly targeted" by the City. The Owner says, "This is shown in the trial court's ruling . . . ." The Owner cites to a paragraph in the trial court's judgment that states:

> [The Owner] believes that the City . . . has "targeted" him or treated him unfairly because his property is not as "bad off" as some other dwellings in the neighborhood and he offered his testimony, Mr. Kirk's testimony and numerous photos as evidence that other properties on the same street and in the general neighborhood appeared to be in worse condition.

[1] The Owner does not argue in this court that he was prejudiced in any way by the manner in which he was given notice. Indeed, the contrary seems to be case. The Owner was able to obtain an injunction against the City and delay the hearing on the proposed demolition from February to May.

The Owner goes on to say that "his complaint of being targeted due to his ethnicity is further noted in [Trial Exhibit 1.]" Trial Exhibit 1 is an email to the Owner from the Administrator of the Department of Neighborhood Services and Community Development for the City . The email states:

> For the sake of time, I am responding to the e-mail you sent to Tony Sammons last Friday regarding the demolition hearing scheduled this week for the referenced property. First, let me take exception to your allegation that you are being discriminated against because of your ethnicity. This is absolutely incorrect. The subject property was cited to demolition court by Judge Paty because of your consistent failure to abate housing and overgrowth violations. Proper notice has been given to you legally regarding the hearing. While you may not want to invest money in totally rehabbing the property until the redemption period has expired, you have an absolute legal responsibility to keep the property boarded and secured and all overgrowth abated for the safety of residents in the area. You have failed to adhere to this standard. We will strongly contest your assertion of discrimination. This office received a similar request from a minority property owner who has been cited to the same demolition hearing in which he was instructed that he must appear at the demolition hearing and present his case to the public officer who will make a ruling on the request. You are not being treated any differently than this minority.
>
> * * *
>
> I regret that you found it necessary to file an unsubstantiated complaint with the Office of Multicultural Affairs (OMA) on this matter, however, since this matter has entered into another arena you can be assured that this office will vigorously, and successfully defend the actions it has taken against the property, not an individual.

We do not see that either the statement in the trial court's opinion or the City employee's email shows ethnic discrimination. The burden is on the Owner to demonstrate that he is being treated differently by the City than other similarly situated property owners. The Owner would need to show that other properties in the neighborhood were owned by non-minorities, had the same violation history as the minority members' properties, and that the City took no administrative actions against the properties owned by non-minority members. The Owner did not produce this type of proof.

At the on-site hearing, the Owner made much of the fact that structures on properties in the immediate neighborhood of his property are in worse condition than his. He claimed that these properties have not been subject to demolition orders of the City. The trial court heard the testimony in the case, viewed the Owner's structure inside and outside, viewed at least a couple of the other properties pointed out by the Owner, considered the many photographs entered into evidence, and held as follows:

> [The Owner] failed to prove his selective enforcement contention. He showed many pictures of other dwellings that needed repair. . . . These photos do not identify the location of the property nor the owner of the property. [The Owner] did not show that any of the properties photographed had or had not been contacted by code enforcement officials regarding each owner's property. None of the photos show the interior of any other dwelling or structure. The City's evidence is that other violations are cited and followed. Some houses have been rehabilitated and others have been demolished.

Under applicable law, "[t]here are two elements to a selective enforcement claim: (1) the government has singled out the plaintiff for adverse regulatory or enforcement action while others engaging in similar activity have not been subject to the same type of action and (2) that the decision to prosecute them rests on an impermissible consideration or purpose." ***421 Corp. v. Metropolitan Gov't of Nashville and Davidson County***, 36 S.W.3d 469, 480-81 (Tenn. Ct. App. 2000) (citation omitted).

In ***421 Corp***., this court set out how each element is to be proved, as follows:

> With regard to the first element, the claimant must allege and prove: (1) that other non-prosecuted offenders have engaged or are engaging in essentially the same conduct, (2) that the non-prosecuted offenders violated the same regulation, statute, or ordinance that the claimant is accused of violating, and (3) that the magnitude of the non-prosecuted offender's violation was not materially different from that of the plaintiffs. . . . With regard to the second element, the claimant may prove either that the government singled out a protected class of citizens for enforcement of the law or that the government prosecution was intended to deter or punish the exercise of a protected right.

Id. at 480-81 (citations omitted).

The trial court concluded "[t]hat [the City] has not targeted [the Owner], even though, as he says, there are other dwelling[s] on the street and nearby that appear to have more damage, [some of these owners have agreed to remediation and/or demolition, and some have been more cooperative regarding security and other actions than [the Owner.]]" We hold that the evidence does not preponderate against the trial court's finding that the Owner's property was not "targeted" by the City for enforcement based on impermissible and/or discriminatory reasons.

D.

The Owner says that the City should be estopped from demolishing the subject building. The Owner did not raise this issue in the original petition. Nor did the Owner raise it at the hearing on March 27 or the on-site hearing on May 4, 2007. In addition, the Owner makes his argument relying

on facts that are not in the record. In his brief, the Owner cites to the record at several places with only one citation addressing the concept of estoppel in any way. At page 62 of the record, after the proof is in, the trial court indicates that it wants a copy of the email of February 26, 2007, because the Owner repeatedly referred to it during the hearing. The trial judge then said, "And it might work an estoppel or a waiver, depending on the wording of the letter. I haven't seen the wording of the letter. . . ."

From this, the Owner argues that he should have been allowed to rely on the representation in the email to this effect: "While you may not want to invest money in totally rehabbing the property until the redemption period has expired, you have an absolute legal responsibility to keep the property boarded and secured and all overgrowth abated for the safety of residents in the area." The Owner notes that the trial court did not address the issue of reliance. Since the issue was not raised, it was not addressed. The trial court found that "the redemption period of one year had expired on June 15, 2006 and no one has attempted to redeem the property . . . ." The Owner argues that the language in the email, without saying so, gives him a three year redemption period, and he should be able to rely on the "statement" in the email as an estoppel to that effect. We disagree. The email says what it says and nothing in the statement quoted by the Owner states or even remotely suggests that the Owner has a three-year period within which to rehabilitate the subject building.

The Owner argues in his reply brief that the City sold the subject property in a defective condition and the "improper" sale should work an estoppel against demolition of the subject building. The Owner did not raise a "defective condition" argument in the original petition. Nor did the Owner raise the issue at the hearing on March 27 or the on-site hearing on May 4, 2007. The facts and law necessary to rule on the issue are not in the record and we decline to address this hypothetical scenario. ***State ex rel. DeSelm v. Jordon,*** No. E2007-00908-COA-R3-CV, 2008 WL 4254226, at * 6 (Tenn. Ct. App. E.S., filed September 12, 2008) (court not inclined or authorized to issue advisory opinion).

E.

The Owner argues that "the greater weight of the evidence presented to the Chancellor did not support his findings and therefore, the trial court should be reversed." After our review of the record *de novo*, we hold that the evidence does not preponderate against the findings of the trial court (1) that no effort has been made to repair the building since the Owner's purchase of the property, (2) that the structure violates the applicable provisions of the City's Code, and (3) that the structure should be demolished.

VI.

In his brief, the Owner filed "Appendix II" titled "Affidavit confirming demolition on May 23, 2007." In the affidavit, Saima Hashmi, wife of the Owner, attests that "[a]t about 4:30, on May 23, 2007, [she] went to the property [at 4201 Fagan St.] with young sons to mow the grass. The house had been demolished." The demolition of the subject building is also referred to in the conclusions of both of the Owner's briefs filed in this appeal.

Review of post-judgment facts lies in the discretion of the appellate court. *See* Tenn. R. App. P. 14 (a) (2007). In its brief, the City does not allude to the fact that it has already demolished the subject building. It is also clear that the affiant Saima Hashmi does not know the actual date the structure was demolished. Under these circumstances, we take no position with respect to the alleged post-judgment fact that the structure has been demolished in violation of the trial court's order.

VII.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant, Khalid Hashmi. This case is remanded to the trial court for collection of costs assessed below, pursuant to applicable law.

_____

CHARLES D. SUSANO, JR., JUDGE